THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of case

A.O. No. 339 of 2001
Oriental Insurance Co. Ltd.

Vs.

Shadi Ram

Approved for reporting.

Not approved for reporting

Date of decision- 31.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 339 of 2001
(Old No.426/1995)

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Shadi Ram ..... Respondent

A.O. No. 335 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Indra Singh ..... Respondent

A.O. No. 1421 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Smt. Seera Devi ..... Respondent

A.O. No. 345 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Rajendra Prasad ..... Respondent

A.O. No. 346 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Dhoda & others ..... Respondent

A.O. No. 347 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Pharas Ram & others ..... Respondents

A.O. No. 348 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Surat Singh & others ..... Respondents

A.O. No. 349 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Devendra & others ..... Respondents

A.O. No. 350 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Prem Singh & others ..... Respondents

A.O. No. 351 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Ram Prakash & others ..... Respondents

A.O. No. 352 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Bhaj Ram & others ..... Respondents

A.O. No. 354 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Girdhari & others ..... Respondents

A.O. No. 342 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Smt. Usha Devi ..... Respondents

A.O. No. 341 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Smt. Rajani Devi & others ..... Respondents

A.O. No. 340 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Pratap Singh & others ..... Respondents

A.O. No. 338 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Jai Prakash & others ..... Respondents

A.O. No. 337 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Asha Ram & others ..... Respondents

A.O. No. 355 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Dhan Ram & others ..... Respondents

A.O. No. 1593 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Shiv Ram & others ..... Respondents

A.O. No. 1595 of 2001

Oriental Insurance Co. Ltd. ..... Appellant

Versus

Rajendra Prasad & others ..... Respondents

Sri Prabhash Pandey, Advocate for the appellant
Miss. Seema Sirohi, Advocate for the respondents.

Dated: August 31 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties

All the appeals have been filed against a common judgment and award dated 1.8.1995 passed by the Motor a Accident Claims Tribunal, Tehri Garhwal.

Briefly Stated the facts giving rise to the present appeals are that respondent claimants have filed as many as 21 claim petitions registered as M.A.C. case No. 10 of 1989 to 31 of 1989 for grant of compensation on account of injuries sustained by

the claimants and also on account of death of some of the passengers travelling by Bus No. URM 8612 involved in the accident. The petitioners have alleged that on 30.11.1988 Bus No. URM 8612 was started from Moridhar for going to Uttarkashi. The bus was carrying a marriage party. At about 2.15 PM when the bus reached near Jadipani, it met with accident and rolled into a khadd. All the passengers travelling by the bus sustained injuries in the accident out of which five passengers were succumbed to the injuries sustained. The owner of the bus was Smt. Rukamani Devi and the bus was comprehensively insured with the appellant. The claimants have stated that the accident took place due to rash and negligent driving by the bus driver.

Opposite parties have contested the claim petition. They denied that the accident took place due to rash and negligent driving. Their version of the accident is that the accident took place due to failure of brakes and steering.

On the basis of contentions of the parties the following issues were framed:

1. Whether the accident in question took place due to rash and negligent driving of Vehicle NO. URM 8612 resulting in the death of Ram Chandra?
2. Whether the vehicle in question was being driven in violation of the terms of the policy at the time of accident as alleged by the insurance company?
3. Whether the vehicle in question was being driven without a valid driving licence at the time of accident?
4. Relief?

On the basis of the ocular testimony of witnesses Dodha and Parushram the Claims Tribunal has held that the accident occurred due to rash and negligent driving by the driver of Bus No. URM 8612. In reply of issue no.2 the claims Tribunal has held that neither the bus was over loaded nor the driver or the owner the bus have violated the terms and conditions of the insurance policy. Copy of the driving licence has been filed by the driver which is valid.

The claims Tribunal awarded a compensation of Rs.90,000/- in Case no. 10of 1989 Siradevi vs. Rukamani , a sum of Rs.90,000/- in case No. 11 of 1989 Usha Devi vs. Rukamani & others, Rs.10,000/- in the case No.12 of 1987 Devendra Singh vs. Rukamani & others, Rs.10,000/- in case No. 13 of 1989 Surat Singh vs. Rai Singh, Rs.5,000/- in case No. 14 of 1989 Rajendra vs. Rai Singh, Rs. 5,000/- in case No. 15 of 1989 Pharush Ram vs. Rai Singh, Rs.10,000/- in case no. 16 of 1989 Jai Prakash vs. Rai Singh, Rs.15,000/- in case No. 17 of 1989 Shadi Ram vs. Rai Singh Rs.6,000/- in case No.18 of 1989 Shiv Ram vs. Rai Singh, Rs.12,000/- in case No. 19 of 1989 Pratap Singh vs. Rai Singh, Rs.36,000/- in case no. 20 of 1989 Rajani vs. Rai Singh, Rs.36,000/- in case no. 21 of 1989 Inder Singh vs. Rai Singh, Rs.36,000/- in case no. 22 of 1989 Rajendra Singh vs. Rai Singh, Rs.10,000/- in case No. 23 of 1989 Prem Singh vs. Rai Singh, Rs.5,000/- in case no. 24 of 1989, Rs.10,000/- in case no. 26 of 1989 Ram Prakash vs. Rak Singh, Rs.10,000/- in case no. 28 of 1989 Girdhari vs. Rai Singh, Rs.8,000/- in case no. 29 of 1989 Dhanram vs. Rai Singh, Rs.5,000/- in case no. 30 of 1989 Asha Ram vs. Rai Singh and Rs.10,000/- in case no. 31 of 1989 Todha vs. Rai Singh.

Aggrieved by the judgment and award the Oriental Insurance Company has preferred the present appeals.

In appeal no. 348 of 2001 Oriental Insurance Co. Ltd. vs. Surat Singh & others, A.O. No. 1595 of 2001 Oriental Insurance co. Ltd. vs. Rajendra Prasad & others, A.O. No. 347 of 2001 Oriental Insurance Co. Ltd. vs. Pharas Ram& others, A.O. No. 1593 of 2001 oriental Insurance Co. Ltd. vs. Shiv Ram & others, A.O. No. 352 of 2001 Oriental Insurance co. Ltd. vs. Bhaj Ram & others, A.O. No. 355 of 2001 Oriental Insurance co. Ltd. vs. Dhan Ram & others and A.O. No. 337 of 2001 Oriental Insurance co. vs. Asha Ram & others, the amount of award is less than Rs.10,000/- and as such no appeal can be preferred in view of the provision made under section 173 (2) of the M.V.Act, and as such all these appeals are dismissed as not maintainable.

So far as the other appeals are concerned, it has been contended by the learned counsel for the appellant that the owner and driver of the bus has flouted the terms and conditions of the insurance policy. It was further contended that the driver of the bus has no valid driving licence.

The issues of violation of terms and conditions of insurance policy and that the driver of the bus have no valid driving licence have been raised by the appellant respondent. Therefore, the burden of proof lies upon the insurance company. The learned claims tribunal framed issues on both these pointes but the appellant has not lead any evidence in this connection. The driver of the Bus has produced a copy of driving licence before the Claims Tribunal and the Claims Tribunal found that the driving licence was valid and genuine. However, if the owner of the vehicle has flouted the terms and conditions of insurance policy or the driver has no valid driving

licence, the liability of the insurance company towards the third party does not get avoided. The Insurance Company on proof that owner of vehicle was aware of fact that licence was fake, can however recover the amount from insured. As held by the Apex Court in the case of United India Insurance Co. Ltd; vs. Lehru and others, 2003 (3) SCC 338, as under:

"Now let us consider section 149 (2). Reliance has been placed on Section 149 (2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a breach. As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen while it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the Insurance Company disown liability ? The answer has to be an emphatic "no". To hold otherwise would be to negate the very purpose of the compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance at least third party insurance compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the Company is to insurance. In all businesses there is an element of risk. All persons carrying on business must taken risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not

be made to suffer or loss. Those provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

The Apex Court in the case National Insurance Co. Ltd. vs. Swaran Singh and others (2004) 3 SCC 297, has held as under:

110. The summary of our findings to the various issues as raised in these petitions is as follows:

…… …… ……

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub section (2) (a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured of the third parties. To avoid its liability towards the insured the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duty licensed driver or one who was not disqualified to drive at the relevant time."

However, in the present appeals the insurance company has utterly failed to establish that the owner and driver of the vehicle met with accident have flouted the terms and conditions of the insurance policy and as such the appellant is not entitled

to recover the amount of compensation from the insured i.e. the owner of the vehicle.

The appellant has also raised point that at the time of accident the bus was overloaded and the passengers travelling by the bus at the time of the accident were more than the sanctioned strength of the bus. The learned claims tribunal has held that the accident was caused due to rash and negligent driving of the bus in question and it was not due to overloading of the bus. The bus was comprehensively insured with the appellant for third party insurance and the appellant was bound to pay compensation to the passengers travelling by the bus.

In view of the above, the appeals have no merit and all the appeals are hereby dismissed with costs.

(Rajesh Tandon J.)

August 31, 2004

*Dhyani